IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6303 OF 2004

FGP Limited ... Petitioner

V/s.

Saleh Hooseini Doctor & Anr. ... Respondents

Mr.S.S. Deshpande for Petitioner
Mr.D.D. Madon i/b Dhruve Liladhar & Co. for Respondent Nos.1 and 2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 2, 2005**

P.C.:

. The question involved in this writ petition is whether the Small Causes Court should have exercised jurisdiction under section 10 of the Code of Civil Procedure or in the alternative section 151 of the Code of Civil Procedure to stay the suit filed by the respondents, since the Petitioner had filed an earlier suit for specific performance in this Court.

2. The Petitioner claims to have entered into an agreement of sale with one Sheroo Hooseini Doctor, who was the original owner of the suit premises. The Petitioner claims to be the purchaser of the suit premises and since Sheroo Hooseini Doctor did not execute a deed of sale, suit No.3505 of 1991 was filed

in this Court by the Petitioner. It appears that prior to this, Sheroo Hooseini Doctor had filed a suit for ejectment in the Small Causes Court against the Petitioner. After the Maharashtra Rent Control Act was enacted, the respondents who are the executors of the estate of Sheroo Hooseini Doctor who died in 1999 filed T.E. & R. Suit No.427/450 of 2001. The ground pleaded in the plaint before the Small Causes Court was that the tenancy had been determined and that the Petitioner was not entitled to any protection under the Maharashtra Rent Control Act. The Petitioner was, therefore, liable to had over vacant and peaceful possession of the suit premises. It appears that in the year 2003, an interlocutory notice was moved by the Petitioner in the respondents' suit before the Small Causes Court, praying for a stay of the suit till the Petitioner's suit was disposed off in the High Court. The Petitioner not only invoked the powers of the Court under section 10 of the C.P.C. but also section 151 of the Code. The interim notice which was taken out by the Petitioner before the Small Causes Court was dismissed by the trial Court on 3.12.2003. The revision preferred from that order has also been dismissed on 20.3.2004. Notice of Motion No.1782 of 2004 was moved by the petitioner thereafter in the Suit filed in this Court seeking the same relief, that is, an injunction against the Respondents herein

from proceeding with T.E. & R. Suit No.427/450 of 2001 in Small Causes Court during the pendency of the suit in the High Court. This Notice of Motion was withdrawn on 5th May 2005.

3. The submission of the Petitioner that the Suit before the Small Causes Court should be stayed cannot be accepted for more than one reason. Although the two suits may be between the same parties and may be in respect of the same suit premises, they cannot be tried by the same Court. The relief claimed in the suit before the Small Causes Court cannot be granted by the High Court while deciding the suit for specific performance of the alleged agreement of sale.

4. The submission of the learned Counsel for the Petitioner is that an inferior Court seized of the subsequent suit would pre-empt a superior Court, seized of a prior suit between the same parties, from adjudicating upon a matter directly and substantially in issue in both suits, if stay is not granted. This submission is without merit. The High Court cannot decide, in a suit for specific performance, the relationship of the parties as landlord and tenant. That is an issue which can be decided only by the Small Causes Court in accordance with the jurisdiction

conferred upon it under the Maharashtra Rent Control Act, 1999. The ownership of the suit premises as claimed by the Petitioner under an agreement of sale cannot be decided in the Small Causes Court. The question of title is not directly and substantially in issue in a suit for ejectment filed under the Maharashtra Rent Control Act. Therefore, the interim notice has rightly been discharged by the trial Court.

5. In any event, the Petitioner, in the suit filed before this Court, has pleaded in its plaint that it had paid a sum of Rs.5 lacs to the Defendant in that suit. by way of security deposit and not by way of consideration for the sale of the suit premises. Furthermore, the Petitioner had contended in the plaint that it continued to remain a tenant and was in possession of the premises and that the respondent had accepted the rent. In the agreement of which specific performance is sought, the proviso to clause 7 indicates that the purchaser, that is, the Petitioner herein would be entitled to continue to use and occupy the apartment and the car parking space as a tenant of the landlord i.e., Sheroo H. Doctor.

6. The judgment of the Full Bench of the Gauhati High Court in the case of *Subho Ram Kalita v/s.*

Dharmeswar Das Koch & Ors., **AIR 1987 GAUHATI 73** relied on by the Petitioner to submit that even though the provisions of section 10 may not be attracted, the Petitioner was entitled to the relief, from the Court in exercise of its inherent powers. However, this judgment is of no avail to the Petitioner. The Division Bench of this Court in the case of *Laxmi Investment Co. v/s. Tarachand,* **AIR 1968 BOMBAY 250** has held that section 151 of the Code does not confer any specific power on any Court. It is merely a declaration of the power which inherently exists in every Court. Such a power which is inherent in a Court cannot be exercised or invoked when there is a specific provision in the Code giving a remedy to the party. In such a case, the party is limited to that particular remedy. A similar view has been taken by a learned Single Judge of this Court in the case of *M/s.Aminchand Pyarelal v. Union of India,* **1976 BLR VOL. LXXIX 1** by placing reliance on the judgment in *Laxmi Investment* (supra). Another learned Single Judge of this Court in the case of *Minocher Behramji Damania v/s. Hema N. Dadachanji & Ors.,* **AIR 1982 BOMBAY 151** has considered the judgment in *Laxmi Investment (supra)* and *Aminchand* as well as the judgment of the Supreme Court in the case of *Manoharlal Chopra v/s. Rai Bahadur Rao Raja Seth Hiralal*, **AIR 1962 SC 527** and has held that the powers under section 151 cannot be

exercised where there may be a conflict with what has been expressly provided for in the Code.

7. There can be no dispute that the powers which the Petitioner sought to invoke are stipulated under section 10 of the Code of Civil Procedure. Section 10 of the Code stipulates as under:

> 10. Stay of suit. - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.
> Explanation. - The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

It cannot be said that the matter in issue in the two suits is directly and substantially the same. The Small Causes Court would exercise jurisdiction in respect of the ejectment of the Petitioner in case it was found that he was not protected by the Maharashtra Rent Control Act. On the other hand, the jurisdiction which this Court would exercise in the suit for specific

performance is quite different and this Court would not be able to grant the same relief as claimed by the respondent in the suit filed before the Small Causes Court. The relief claimed in the suit for specific performance of the contract before the High Court also cannot be granted by the Small Causes Court. In these circumstances, there is no question of there being any identity or similarity of the matters in dispute. Therefore, in my view, the provisions of section 10 cannot be invoked and the trial Court was justified in discharging the interim notice.

7. The question of invoking the inherent jurisdiction of the Small Causes Court also does not appeal to me in view of various judgments of the Supreme Court as well as this Court as mentioned above. In the circumstances of the present case, interests of justice would be defeated if the suit before the Small Causes Court is stayed. Admittedly, this Suit is at its final stages. The evidence has been recorded and the matter is at the stage when the respondents' rejoinder is being heard. The Petition though filed in the year 2004 has been moved after one year, only after this Court allowed the petitioner to withdraw the Notice of Motion 1782 of 2004. In such circumstances, I do not see any reason to interfere with the orders of the trial Court or the

appellate court. Writ Petition rejected.